

REMARKS

This is a response to the final Office Action mailed on February 17, 2011. No fee is due in connection with this response. The Commissioner is hereby authorized to charge any fees that may be required or credit any overpayment to Deposit Account No. 02-1818. If such a withdrawal is made, please indicate the Attorney Docket No. 3712036-707 on the account statement.

Claims 1-6 and 8-20 are rejected in this application. Claim 7 was previously canceled. In the Office Action, Claims 1-6 and 8-20 are rejected under 35 U.S.C. §112; and Claims 1-6 and 8-20 are rejected under 35 U.S.C. §103. In response, Claims 1, 8-10 and 14-15 have been amended, and Claims 2-4 and 16-17 have been canceled without disclaimer. The amendments do not add new matter. In view of the amendments and/or for the reasons set forth below, Applicants respectfully submit that the rejections should be withdrawn.

In the Office Action, Claims 1-6 and 8-20 are rejected under 35 U.S.C. §112, first and second paragraphs. In response, Applicants have amended the claims to address the issues cited by the Patent Office. The amendments are supported in the specification, for example, at page 4, lines 24-26, page 5, lines 5-22, and Example 2 of WO 2005/036975. Moreover, the skilled artisan would understand that the term “maximum dimension” of the confectionery product refers to the maximum of any of the three dimensions, i.e., length, width or height, not being greater than 2 cm according to the present claims. Based on at least these noted reasons, Applicants believe that Claims 1-6 and 8-20 fully comply with 35 U.S.C. §112, first and second paragraphs. Accordingly, Applicants respectfully request that the rejections of Claims 1-6 and 8-20 under 35 U.S.C. §112 be withdrawn.

In the Office Action, Claims 1-4, 6, 8 and 16-19 are rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 4,802,924 to Woznicki et al. (“*Woznicki*”). Applicants respectfully traverse the rejection for at least the reasons set forth below.

Amended independent Claim 1 recites a heat shape stable and heat resistant, fat-based confectionery product having a maximum dimension not greater than 2 cm and comprising a film coating having a modified starch, lecithin and at least one of a high fructose corn syrup or glycerol. The amendment is supported in the specification at, for example, page 4, lines 24-26, page 5, lines 5-22, and Example 2 of WO 2005/036975.

Applicants have surprisingly found that fat-based confectionery pieces, such as chocolate morsels, coated with the specifically claimed film coating comprising modified starch as the film-forming agent, together with lecithin, and the plasticizers high fructose corn syrup and/or glycerol are heat resistant and retain their shape even in a food that is heated during its manufacturing process, such as in a cookie. For example, during the baking of a cookie, the fat-based confectionery pieces are subjected to temperatures as high as 80°C and even as high as 200°C. As explained in the specification (see page 8, and example 2), the claimed film-coated fat-based confectionery products are advantageously able to withstand such high temperatures for sufficient time to bake a cookie, without losing their shape, without bleeding of colors and without cracking appearing in the coating. Further, by providing a supplementary ingredient in the film, Applicants can deliver beneficial ingredients to a consumer of the products of the present disclosure.

Moreover, the claimed film coating is designed to retain the shape of the fat-based confectionery product that is being coated when the product is exposed to heat. Visual appearances of foods are a significant part of organoleptic acceptance of a food product and may also be able to heighten the interest of a child. For example, a food product may have dispersed therein recognizable shapes with contrasting colors, which can be very attractive for children and others, especially chocolate with fat-based inclusions of recognizable shapes of different colors. Thus, the retention of shape is particularly important when the products have a recognizable shape such as, for example, animals, cartoon characters, stars, hearts, letter, numbers, etc.

In contrast, *Woznicki* fails to disclose or suggest each and every element of independent Claim 1. *Woznicki* fails to disclose or suggest a film coating having a modified starch, lecithin and at least one of a high fructose corn syrup or glycerol as required by independent Claim 1. *Woznicki* also fails to disclose or suggest a film coating having a thickness of from 1 micrometer to 1 millimeter as required by independent Claim 1. In addition, *Woznicki* fails to disclose or suggest a confectionery product having a maximum dimension not greater than 2 cm as required by independent Claim 1.

Woznicki discloses a film coating on a pharmaceutical tablet, food, confectionery form and the like by coating them with polydextrose. See *Woznicki*, Abstract. *Woznicki* fails to disclose or suggest a film coating comprising the specific combination of components according

to Claim 1. In fact, *Woznicki* fails to even disclose the use of modified starch, high fructose corn syrup or glycerol anywhere in his disclosure.

Moreover, the skilled artisan would have no reason to arrive at the claimed heat shape stable and heat resistant, fat-based confectionery product in view of *Woznicki* because *Woznicki* is not even concerned with the retention of shapes that may be provided to a product coated with the films of the present disclosure. Instead, *Woznicki* is concerned only with producing a coating that adheres to surfaces that are difficult to coat, specifically to the waxy matrix surfaces of some pharmaceutical tablets (see *Woznicki*, column 7, lines 65-69), and to debossed or intalagio surfaces on tablets without obscuring markings (see *Woznicki*, column 8, lines 1-9).

For at least the reasons set forth above, Applicants respectfully submit that *Woznicki* fails to disclose each and every element of independent Claim 1. Moreover, *Woznicki* fails to recognize the advantages, benefits and/or properties of a heat shape stable and heat resistant, fat-based confectionery product in accordance with the present claims. As a result, independent Claim 1, along with any of the claims that depend from Claim 1, are novel and non-obvious over the cited art.

Accordingly, Applicants respectfully request that the rejection of the claims under 35 U.S.C. §103 in view of *Woznicki* be reconsidered and withdrawn.

Claim 5 is rejected under 35 U.S.C. §103(a) as being unpatentable over *Woznicki* in view of U.S. Patent No. 6,274,162 to Steffenino et al. (“*Steffenino*”). Applicants respectfully submit that the patentability of independent Claim 1 as previously discussed renders moot the obviousness rejection of Claim 5 that depends from Claim 1. In this regard, the cited art fails to teach or suggest the elements of Claim 5 in combination with the novel elements of Claim 1. Accordingly, Applicants respectfully request that the rejection of Claim 5 under 35 U.S.C. §103 be reconsidered and withdrawn.

In the Office Action, Claims 9-10, 13, 15 and 20 are rejected under 35 U.S.C. §103(a) as being unpatentable over “Chewy Chocolate-Chip Cookies” by Cooking Light (“*Cooking Light*”) in view of *Woznicki*. Claims 10-12 and 14 are rejected under 35 U.S.C. §103(a) as being unpatentable over “Black Forest Fudge” by Bon Appétit (“*Bon Appétit*”) in view of *Woznicki*. Applicants respectfully traverse the rejections for at least the reasons set forth below.

Independent Claims 9-10 and 15 have been amended to recite, in part, a heat shape stable and heat resistant, fat-based confectionery product having a maximum dimension not greater

than 2 cm and comprising a film coating having a modified starch, lecithin and at least one of a high fructose corn syrup or glycerol. The amendment is supported in the specification at, for example, page 4, lines 24-26, page 5, lines 5-22, and Example 2 of WO 2005/036975. Independent Claim 9 has further been amended to recite, in part, at least one of dispersing the fat-based confectionery product into the food product or distributing the fat-based confectionery product onto the food product. The amendment is supported in the specification, for example on page 8, lines 24-25 of WO 2005/036975.

Woznicki, Cooking Light, and Bon Appétit fail to disclose or suggest each and every element of independent Claims 9-10 and 15. *Woznicki, Cooking Light* and *Bon Appétit* alone or in combination fail to disclose or suggest a film coating having a modified starch, lecithin and at least one of a high fructose corn syrup or glycerol as required by independent Claims 9-10 and 15. *Woznicki, Cooking Light* and *Bon Appétit* alone or in combination fail to disclose or suggest a film coating having a thickness of from 1 micrometer to 1 millimeter as required by independent Claims 9-10 and 15. In addition, *Woznicki, Cooking Light* and *Bon Appétit* alone or in combination fail to disclose or suggest a confectionery product having a maximum dimension not greater than 2 cm as required by independent Claims 9-10 and 15.

Woznicki is deficient with respect to the claimed heat shape stable and heat resistant, fat-based confectionery product as discussed above. *Cooking Light* discloses a recipe for manufacturing Chewy Chocolate-Chip Cookies. See *Cooking Light*. The entire recipe discusses the ingredients and preparation method for producing same. See *Cooking Light*. *Bon Appétit* discloses a recipe for manufacturing Black Forest Fudge that derives its name from the popular German cake flavored with chocolate and cherries. See *Bon Appétit*, lines 3-4. The entire recipe discusses the ingredients and preparation method for producing same. See *Bon Appétit*. At no place in the disclosure does *Cooking Light* or *Bon Appétit* teach suggest the claimed film coating components or the confectionery product dimensions according to Claims 9-10 and 15. In fact, *Cooking Light* and *Bon Appétit* fail to disclose the use of any film coating.

Moreover, the skilled artisan would have no reason to combine *Woznicki* with either *Cooking Light* or *Bon Appétit* in the absence of hindsight because they are each directed to distinguishable products. For instance, *Woznicki* is directed to producing a film coating that adheres to surfaces that are difficult to coat, specifically to the waxy matrix surfaces of some

pharmaceutical tablets. *Cooking Light* or *Bon Appétit* are directed to confectionery products that do not require a coating.

For at least the reasons set forth above, Applicants respectfully submit that *Woznicki*, *Cooking Light*, and *Bon Appétit* fail to disclose each and every element of independent Claims 9-10 and 15. Moreover, *Woznicki*, *Cooking Light*, and *Bon Appétit* fail to recognize the advantages, benefits and/or properties of a heat shape stable and heat resistant, fat-based confectionery product in accordance with the present claims. As a result, independent Claims 9-10 and 15, along with any of the claims that depend from Claims 9-10 and 15, are novel and non-obvious over the cited art.

Accordingly, Applicants respectfully request that the rejections of the claims under 35 U.S.C. §103(a) in view of *Woznicki*, *Cooking Light*, and *Bon Appétit* be reconsidered and withdrawn.

For the foregoing reasons, Applicants respectfully request reconsideration of the above-identified patent application and earnestly solicit an early allowance of same. In the event there remains any impediment to allowance of the claims that could be clarified in a telephonic interview, the Examiner is respectfully requested to initiate such an interview with the undersigned.

Respectfully submitted,

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